

Deborah A. Batts
United States District Judge
500 Pearl Street, Room 2510

INDIVIDUAL RULES AND PROCEDURES

I. GENERAL RULES

APPLICABILITY

1. In the event of any perceived conflict between this Court's Individual Rules, the Local Rules of the Southern District of New York, and the Federal Rules of Civil Procedure, the Federal Rules of Civil Procedure shall control.

COMMUNICATIONS

2. Scheduling and adjournment of all calendar matters should be directed to Mr. William Delaney, the Courtroom Deputy, at 805-0089. Ordinarily, no adjournment will be granted without the consent of all counsel. Alternate dates which are mutually agreeable to all parties should be suggested, subject to the Court's schedule.
3. Communications with Chambers must be made by letter, except for urgent matters requiring immediate attention. **Materials submitted by fax will not be accepted and will be discarded.** Chambers' hours for the public are 9:45 AM to 5:30 PM. Counsel should not call the Judge's law clerks on procedural matters or to ascertain when a matter may be decided. Counsel must identify the official title and docket number of the applicable case and whom they represent in all telephone calls and correspondence with Chambers.

NOTICES OF APPEARANCE

4. In all matters, both civil and criminal, counsel shall file a Notice of Appearance with the Clerk of the Court. The Notice shall include counsel's name, address, phone number and facsimile number.

LETTERS TO THE COURT

5. Letters to the Court should be brief, and should identify the official title and docket number of the case, the writer's business address, telephone and fax numbers, and which party the writer represents. All correspondence with the Court is to be signed by counsel, and delivered to the mail room located on the 8th floor of the Courthouse.

6. All correspondence with Chambers must indicate that copies have been sent to all appropriate parties and indicate the means by which they have been sent. Generally, the same method of delivery to all appropriate parties as was used with Chambers is expected.
7. All communications from Pro Se litigants shall be sent directly to the Pro Se Office, United States District Court, Southern District of New York, U.S. Courthouse, 500 Pearl Street, New York, New York 10007. Nothing should be sent or delivered directly to Chambers.

PAPERS

8. **One courtesy copy of all papers filed with the Clerk**, including the complaint and answer, should be submitted to Chambers by delivery to the Mail Room, located on the 8th floor of the Courthouse.

However, **two courtesy copies of all motion papers**, including those seeking expedited relief, should be submitted to Chambers, by delivery to the Mail Room, located on the 8th floor of the Courthouse.

All courtesy copies should be specifically stamped or marked on the documents themselves "courtesy copy."

9. Original documents will **not** be accepted in Chambers. If original documents are sent to Chambers for filing, they will be discarded.

All stipulations and orders, including but not limited to consent orders, orders to show cause, preliminary injunctions, and temporary restraining orders shall be brought to the Cashier at 500 Pearl Street, First Floor, for approval as to form, before being presented to Chambers.

JUDGMENTS

10. All judgments shall be approved and initialed by the Judgment Clerk before being submitted to Chambers; the Judgment Clerk's office is located on the First Floor at 500 Pearl Street.

EXTENSIONS

11. All requests for extensions of time shall be received by the Court **at least one week** in advance of any deadline, including extensions for time to file an answer or otherwise move against a complaint.

In addition, all requests for extensions of time shall be submitted in writing, shall be joined by the opposing party, or be served on the opposing party so their timely opposition will be received in Chambers at least three (3) business days before the deadline, shall state the

specific reasons why an extension is necessary, and shall include the position of the opposing party or parties as to the request.

Requests for extensions submitted on or after the deadline will be denied.

II. MOTIONS AND PETITIONS

MOTIONS IN GENERAL

Timing of Motions

12. Pre-motion conferences are required **before** the filing of any motions, except for motions in lieu of an Answer, TROs, Orders to Show Cause at the outset of an action, Preliminary Injunction motions made at the outset of an action, Motions to Remand made at the outset of an action, Petitions to Compel Arbitration, Post-Verdict Motions, Motions for Default Judgment, Objections to Reports and Recommendations, Motions for Admittance Pro Hac Vice, Local Civil Rule 6.3 Motions, Rule 59(e) motions and Rule 60(b) motions. Conferences must be scheduled by writing to the Court.
13. All Notices of Motions must have a return date, either in conformity with the time requirements specified in the Local Rules, or a date chosen by agreement of the parties. Service of Motions must be in accordance with Local Civil Rule 6.1.

Objections to Report and Recommendations

14. Objections to Magistrate Judges' Report and Recommendations must be filed within the ten day limit imposed by 28 U.S.C. § 636. Responses to Objections must be served within ten days of receipt of the Objections. These dates may be modified by the parties, on consent, and with permission of the Court. No reply papers shall be submitted.

Filing of Motions

15. **No motion papers in civil cases should be filed in the Clerk's office until the return date of the motion.** The party responding to the motion should serve both the courtesy copies and the original papers on counsel for the moving party, who shall then file with the Clerk all the motion papers together on the return date. Two courtesy copies of all motion papers should be delivered to the Court at that time. **Any papers filed before the return date shall be stricken from the docket and returned to the filing party by the Clerk.**

Miscellaneous Rules Regarding All Motions

16. **No appearance by counsel is necessary on the motion return date.** All motions are taken on submission unless an argument is ordered by the Court.

17. Motions addressed to the Complaint must have a copy of the Complaint annexed as an exhibit.
18. Memoranda of Law **must** accompany all motions (including applications for orders to show cause) or opposition thereto. Each legal proposition shall cite legal authority. Counsel are advised to consult Local Civil Rule 7.1, which requires that a memorandum of law with appropriate case authority accompany each motion or answering motion filed. Every case citation in all Memoranda of Law **must include both jump cites and parenthetical quotes of the specific relevant language. Failure to comply with this rule will result in the summary rejection of the papers filed, and may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.**
19. Memoranda of Law and responses thereto **may not exceed twenty-five (25) pages, double-spaced, in length**, unless **prior** permission of the Court has been granted. All Memoranda of Law must contain a Table of Contents and a Table of Authorities.
20. Reply memoranda are limited to **ten (10) double-spaced** pages. Reply papers shall only address those issues raised in the response papers. Accordingly, no sur-reply papers may be submitted.
21. All memoranda citing United States Supreme Court cases must contain citations to the Supreme Court Reporter. All memoranda citing New York cases must contain citation to the New York Supplement. If an unpublished opinion or decision is cited, a copy of the opinion or decision shall be provided to the Court. Copies of decisions located on Lexis and Westlaw or any other electronic database must also be provided to the Court.

SUMMARY JUDGMENT MOTIONS

22. For obvious reasons, a request for a motion for summary judgment prior to the completion of discovery is very rarely granted. However, a party seeking to file a motion for summary judgment (or partial summary judgment) **before the completion of discovery** must request permission of the Court before serving any Local Civil Rule 56.1 Statement. To commence the pre-motion process prior to the completion of discovery, the movant must demonstrate extraordinary cause to the Court by letter.
23. **If discovery has been completed** the following procedure applies:

The moving party shall inform the Court and the opposing side of its intention to move for summary judgment by the date set out in the Court's Scheduling Order. Within 10 days of serving its intent to file for summary judgment, the moving party must serve on the opposing side and submit to Chambers a letter no more than two pages in length setting forth the proposed basis for summary judgment. Within 10 days of the receipt of this letter, the opposing side must respond by letter to the moving party's request. These letters shall form the basis of discussion

at the pre-motion conference held with the Court. However, if the Court finds that a conference is not necessary, the Court will issue a motion schedule.

24. In the Local Rule 56.1 Statement submitted on a motion for summary judgment, there must be only **one** factual assertion in each numbered paragraph. Each factual assertion **must** be followed by a citation to the portion(s) of the evidentiary record relied upon (e.g., "Ms. Jones visited Dallas, Texas, on July 10, 1989. Smith Aff. ¶ 3; Hays Dep. at 25").
25. **The response to the Rule 56.1 Statement must contain numbered paragraphs tracking those in movant's Rule 56.1 Statement, and must state in each paragraph specifically what is admitted, what is disputed, and the basis for any dispute**, citing specifically the portion(s) of the evidentiary record relied upon (e.g., "Ms. Jones was in New York City at all times during the month of July 1989. Jones Aff. ¶ 8; Walsh Dep. at 50-53"). Lack of relevance is not a valid reason for refusing to agree that a fact is not "in dispute." Each assertion must be a factual, **not legal**, assertion.
26. Parties filing simultaneous cross-motions, or co-parties filing joint motions, for summary judgment must submit a jointly prepared Rule 56.1 Statement of undisputed facts. If the parties cannot agree as to any particular fact, they must set forth the disputed item and explain the basis for contesting it.
27. Individual Rules 12-13, 15-21 apply to summary judgment motions.
28. Local Rule 56.1 Statements found not to be in compliance with these Rules will be rejected.

ORDERS TO SHOW CAUSE AND TROs

29. Unless **extraordinary** cause is shown, Orders to Show Cause and Temporary Restraining Orders will **not** be issued, unless the requesting party gives reasonable notice of the time and date the application will be filed to all parties or their counsel (if known). An application for an order to show cause shall be accompanied by a supporting memorandum of law.

Orders to Show Cause and TROs shall be delivered directly to Chambers, Room 2510.

DEFAULT JUDGMENTS

30. Default judgments will be granted only upon motion with notice to the Defendant(s) and their counsel, if known. Proof of service of the Complaint and of the Motion for Default Judgment shall be attached to the Motion for Default Judgment. A Clerk's Certificate shall be obtained before an application for default judgment will be considered.

ADMISSIONS PRO HAC VICE

31. Motions for pro hac vice admission shall contain the following:
- An affidavit from local counsel or other supporting attorney pursuant to Local Civil Rule 1.3 advocating the applicant's admittance.
 - An affidavit from the applicant with an original Certificate of Good Standing from the state bar or country of admittance attached, no more than thirty (30) days old. The affidavit should also state the applicant's qualifications, other courts of admittance, whether he or she has ever been disciplined or disbarred and a Statement as to how many times the applicant has been admitted pro hac vice in this district.
 - Proposed Order

BANKRUPTCY APPEALS

32. Appellant has thirty (30) days from the filing of the appeal to serve its Brief. Appellee has thirty (30) days to respond, and Appellant has five (5) days to reply. All papers shall be filed with the Clerk of the Court sixty-five (65) days from the filing of the appeal. Extensions may be granted upon consent and with permission of the Court. Parties are directed to abide by the page limits set forth in the relevant statutory provisions.

III. CONFERENCES

33. After pleadings have been joined in a civil case, a pre-trial conference will be called, usually by written notice. Copies of this written notice must be sent to all other parties immediately upon receipt by a party. At the conference, the Court will discuss the status of pre-trial discovery, settlement negotiations, and prepare a Scheduling Order. **Counsel are directed to discuss these matters among themselves prior to the conference.**
34. At least one lawyer for each party must attend all conferences. That lawyer shall be well informed about the factual and legal issues in the case and, as required by Fed. R. Civ. P. 16(c), "shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed."

IV. CRIMINAL CASES

35. Counsel in criminal cases must come to Room 24C on the 24th Floor to meet with the Courtroom Deputy, Mr. Delaney, immediately following their appearance in Part I and the assignment of the case to Judge Batts. An initial pre-trial conference will be scheduled at that time.

36. Rules 40-43 and 45-49 regarding the submission of proposed requests to charge, voir dire questions, and exhibits, apply equally to criminal trials. See also Individual Rules 2-5, 8, 11, 16, and 18-21.

V. JOINT PRE-TRIAL ORDERS

37. A joint pre-trial order shall be submitted according to the schedule set by the Court and include, in the following order:

An introductory paragraph that reads, "The undersigned attorneys hereby affirm that this Joint Pre-Trial Order is submitted in conformity with the Individual Rules of Judge Deborah A. Batts, dated October 31, 1999":

- a. Brief, non-adversarial statement of the basic nature of the case;
- b. **Specific, factual** basis for jurisdiction and venue;
- c. Designation of the case as jury or non-jury;
- d. Relief sought;
- e. Undisputed facts;
- f. Plaintiff's assertions of disputed facts, with citations to the evidentiary record, as required in Rules 24-25, supra;
- g. Defendant's assertions of disputed facts with citations to the evidentiary record, as required in Rules 24-25, supra;
- h. Brief listing of issues of law to be decided by the Court, **tracking** issues of law fully developed in separate Memoranda of Law submitted in accordance with Scheduling Order;
- i. **Alphabetical** list of witnesses to be called at trial for each party and a brief summary of the testimony of each witness (one **paragraph** at most), if two or more witnesses will testify to the same facts, state why their testimony will not be cumulative;
- j. List of each party's exhibits to be offered at trial, including the other party's objections, if any, and the specific factual as well as legal basis for objections as to admissibility, listed on the same page in an adjacent column. The proponent should address briefly and specifically the objection raised.

If any of the exhibits to be used are depositions, they shall also be listed and the parties must submit jointly one copy of a deposition on which the proponent has marked in the margin with red marker those relevant portions designated, the opponent has marked in the margin with blue marker those relevant portions counter-designated, and objections are marked in black marker, identifying the party objecting and the specific basis for the objection. The jointly marked deposition should have an index indicating the pages designated as evidence and by whom, as well as the pages where objection has been made.

The parties must exchange and pre-mark all exhibits.

Whenever possible, the parties should stipulate as to authenticity and admissibility of proposed exhibits.

Defendants are to mark their exhibits A through Z, then A1 through Z1, then A2 through Z2, until all exhibits have been marked. Plaintiffs are to mark their exhibits using only numbers, beginning with 1, through ∞.

Exhibits not exchanged and listed in the joint pre-trial order may not be introduced at trial, **except for extraordinary cause shown.**

Any objections not stated in the JPTO are deemed waived.

- k. Experts to be called at trial and a brief summary of the testimony of each expert (one page at most);
- l. Trial counsel; and,
- m. Estimate of trial time.

The closing paragraph of the joint pre-trial order shall state:

"MODIFICATION OF ORDER: IT IS FURTHER ORDERED that the Court may, in order to prevent manifest injustice or for good cause shown, at the trial of the action or prior thereto, upon application of counsel for either party made in good faith, or upon the motion of the Court, modify this Pre-Trial Order upon such conditions as the Court may deem just and proper."

- 38. Failure to submit a conforming, meaningful pre-trial order in sufficient detail may result in sanctions, including preclusion of testimony or other evidence not adequately listed and described.

VI. TRIAL RULES AND PROCEDURES

- 39. At any time after the ready for trial date, counsel must notify the Court and their adversaries in writing of any potential scheduling conflicts, including, but not limited to, trials and vacations, that would prevent a trial at a particular time. Such notice must come **before** counsel are notified by the Court of an actual trial date, **not after**. Counsel should notify the Court and all other counsel in writing, at the earliest possible time of any particular scheduling problems involving out-of-town witnesses or other exigencies.

JURY TRIALS

- 40. With the joint pre-trial order, the parties shall submit a set of all proposed exhibits **to which objections have been raised.**

41. Proposed requests to charge and proposed voir dire questions shall be submitted in accordance with the Scheduling Order. No boiler plate charges shall be submitted; charges specifically appropriate to the case at hand may be submitted. Each charge shall be numbered, captioned, and set forth the factually unembellished proposed pattern charge or specify the authority for the proposed charge. **The Plaintiff(s) will submit its proposed charges to the Defendant(s) in sufficient time that the Defendant's charges will track, in number and subject matter order, those of the Plaintiff. If the Defendant consents to a charge proposed by the Plaintiff, it will so state when addressing that charge number.**
42. Five days before trial each party shall provide two sets of legible, unstapled exhibits in 3 ring binder(s), tabbed sequentially, with an accurate, complete list of exhibits and brief description in the front of the first binder.
43. The parties shall submit a 3-1/2" computer diskette in WordPerfect 5.0 or 5.1 and 6.0 or 6.1, containing the requests to charge.
44. In selecting the jury in either a civil or criminal trial, the "struck panel" method will be used. For further information on this procedure, contact Mr. Delaney at (212) 805-0089.
45. If the trial date is canceled by one of the parties fewer than two (2) business days prior to its scheduled commencement, counsel will be assessed the cost of the attendance of jurors for one day.

BENCH TRIALS

46. In a bench trial, two copies of pre-trial memoranda, setting forth the relevant statutory and case law shall be submitted by each party in accordance with the Scheduling Order. Proposed findings of fact and conclusions of law shall be submitted in accordance with the Court's directions. The pre-trial memoranda for each party shall be submitted on an IBM compatible, 3 1/2" computer diskette in WordPerfect 5.0 or 5.1 and 6.0 or 6.1 file format. Proposed findings of fact and conclusions of law also shall be submitted on an IBM compatible, 3 1/2" computer diskette in WordPerfect 5.0 or 5.1 and 6.0 or 6.1 file format.
47. At trial, all direct testimony shall be submitted by affidavits, which are to be filed with the Court **one week prior to trial**. Three days after submission of such affidavits, counsel for each party shall submit a list of all affiants, if any, that he or she intends to cross-examine at the trial. If any party wishes to present direct testimony through live witnesses, counsel shall nevertheless submit affidavits as stated in this paragraph and make application to present such direct testimony prior to trial.
48. Five days before trial, each party shall provide two sets of legible, unstapled exhibits in 3 ring binder(s), tabbed sequentially, with an accurate, complete list of exhibits and brief description in the front of the first binder.

DEPOSITION TRANSCRIPTS AT TRIAL

49. As set out in Rule 37j, proffering counsel shall have marked copies of any portions of deposition transcripts that are to be read in a jury case for the Court and court reporter. In a bench trial, counsel shall mark the portion of each deposition transcript to be offered in evidence and supply copies to the Court and to the court reporter. In either instance, only relevant, evidentiary portions of the transcript should be marked and included.

WITNESSES

50. Counsel shall have all necessary witnesses on hand to commence and continue trial without interruption or delay.

VII. RICO STATEMENTS

51. Claims asserting violations of 18 U.S.C. § 1962 must be accompanied by a RICO Statement, as set forth under Rule 52. Plaintiff shall submit a RICO Statement to both the Court and Defendant(s) at the time of filing. Upon receipt of the RICO Statement, Defendant(s) shall have **thirty (30) days** to move or answer.
52. The RICO Statement shall include the facts the party is relying upon to assert the RICO claim in light of, and with particular attention to, the "reasonable inquiry" required by Fed. R. Civ. P. 11. The Statement shall be in a form that uses the numbers and letters set forth below, and shall:
- a. State whether the unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).
 - b. List each defendant and describe the misconduct and basis of liability of each defendant.
 - c. List other wrongdoers, other than the named defendants, and describe the misconduct of each wrongdoer.
 - d. List the victims and state how each victim was injured.
 - e. Describe in detail the pattern of racketeering activity or collection of unlawful debts for each RICO claim. The description of the pattern of racketeering shall:
 - (1) List the predicate acts and the specific statutes which were violated;
 - (2) State the dates of the participants in the predicate acts, and the facts surrounding the predicate acts;

- (3) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the nature, time, place and contents of misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made; it must be clear why the plaintiff claims the acts to constitute fraud or misrepresentations;
 - (4) State whether there has been a criminal conviction for violation of the predicate acts;
 - (5) State whether civil litigation has resulted in a judgment with regard to the predicate acts;
 - (6) Describe how the predicate acts form a "pattern of racketeering activity"; and
 - (7) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.
- f. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall:
- (1) State the names of the individuals, partnerships, corporations, associations, or other legal entities that constitute the enterprise;
 - (2) Describe the structure, purpose, function and course of conduct of the enterprise;
 - (3) State whether any defendants are employees, officers or directors of the alleged enterprise;
 - (4) State whether any defendants are associated with the enterprise;
 - (5) State whether you claim that the defendants are individuals or entities separate from the enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and
 - (6) if any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.
- g. State and describe in detail whether you claim that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.
- h. Describe the relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
- i. Describe what benefits, if any, the enterprise receives from the alleged patterns of racketeering.
- j. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

- k. If the complaint alleges a violation of U.S.C. § 1962(a):
 - (1) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
 - (2) Describe the use or investment of such income.
- l. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.
- m. If the complaint alleges a violation of 18 U.S.C. § 1962(c):
 - (1) State who is employed by or associated with the enterprise; and
 - (2) Describe whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).
- n. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.
- o. Describe the alleged injury to business or property.
- p. Describe the direct causal relationship between the injury and the violation of the RICO statute.
- q. List the damages sustained for which each defendant is liable.
- r. List all other federal causes of action, if any, and provide the relevant statute numbers.
- s. List all pendent state claims, if any.
- t. Provide any additional information potentially helpful to the Court in adjudicating your RICO claim.